



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

April 16, 2004

Ref: 8ENF-T

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Daniel R. Twichell
Registered Agent for Charleswood, Inc.
901 13th Avenue E.
P.O. Box 458
West Fargo, ND 58078-0458

Re: Administrative Order under the
Clean Water Act 33 U.S.C. § 309(a)

Dear Mr. Twichell:

Enclosed is a United States Environmental Protection Agency Region 8 ("EPA") Administrative Order ("Order") issued to Charleswood, Inc. The Order alleges violations of the Clean Water Act, 33 U.S.C. § 1251, et seq. (the "CWA"). The EPA is authorized to issue this order under section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3). The Order describes the actions necessary in order for Charleswood, Inc. to achieve compliance with the CWA.

The CWA requires the EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the CWA and any Orders issued thereunder. Section 309 of the CWA provides a variety of possible enforcement actions, including filing civil judicial, criminal, or administrative actions (33 U.S.C. §§ 1319(b), (c), and (g)). Section 508 of the CWA allows for debarment from Federal contracts and/or loans for any noncompliance with the CWA or with an Order issued pursuant to the CWA (33 U.S.C. § 1368).



Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of the Order. If you have any questions regarding this letter, the enclosed Order, or any other matter pertinent to compliance with the CWA, the most knowledgeable people on my staff regarding these matters are Colleen Gillespie, Technical Enforcement Program, at (303) 312-6047, and Peggy Livingston, Enforcement Attorney, at (303) 312-6858.

Sincerely,

Eddie A. Sierra for/

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

cc: Tina Artemis, Regional Hearing Clerk
Dennis Fewless, NDDH

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. **CWA-08-2004-0036**

In the Matter of:)	
)	
)	ADMINISTRATIVE ORDER
Charleswood, Inc.)	
a North Dakota corporation,)	
)	
Respondent.)	

INTRODUCTION

1. This administrative order is authorized by Congress in section 309(a)(3) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act (CWA or the Act), 33 U.S.C. § 1319(a)(3).
2. The undersigned EPA official has been properly delegated the authority to issue this order.
3. EPA alleges that Respondent has violated the Act and/or regulations and orders Respondent to achieve and maintain compliance, as more fully explained below.

FINDINGS OF FACT AND LAW

4. In order to restore and maintain the integrity of the nation's water, section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the Act, including section 402, 33 U.S.C. § 1342.
5. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which EPA and, upon receiving authorization from EPA, states may permit discharges into navigable waters, subject to specific terms and conditions.
6. Section 402(p) of the Act, 33 U.S.C. § 1342(p), requires that any discharge of storm water associated with an industrial activity must comply with the requirements of an NPDES permit.
7. As directed by section 402(p) of the Act, 33 U.S.C. § 1342(p), EPA has issued

regulations that further define requirements for NPDES permits for storm water discharges. The regulations include those codified at 40 C.F.R. part 122.26.

8. EPA's regulations define discharges associated with industrial activity to include construction activity, with an exception not relevant here for some sites that disturb less than five acres. 40 C.F.R. § 122.26(b)(14)(x).
9. EPA's regulations require each person who discharges storm water associated with industrial activity to obtain coverage under either an individual permit or a promulgated general permit. 40 C.F.R. § 122.26(c).
10. Respondent is a North Dakota corporation and is doing business in the State of North Dakota.
11. EPA has authorized North Dakota to assume primary responsibility for issuing NPDES permits for discharges in that state. 40 FR 28663, July 8, 1975.
12. Effective October 1, 1999, the State of North Dakota issued a general NPDES permit authorizing discharges of storm water associated with construction activities, if done in compliance with the conditions of the permit. Permit no. NDR03-0000.
13. Effective {insert} 1992, the State of North Dakota issued a general NPDES permit authorizing discharges of storm water associated with construction activities, if done in compliance with the conditions of the permit. Permit no. NDR03-0000. This permit was in effect until {}.
14. Respondent is a "person" as that term is defined in section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
15. As a "person," the Respondent is subject to the requirements of the Act and 40 C.F.R. part 122.
16. Respondent owns and/or has been engaged in construction activities at a facility located at 615 15th Avenue East, West Fargo, North Dakota, 58078.
17. At its facility, Respondent's construction activities have disturbed over five acres.
18. The runoff and drainage from the Respondent's facility is "storm water" as defined in 40 C.F.R. § 122.26(b)(13).
19. Storm water contains "pollutants" as defined by section 502(6) of the Act, 33 U.S.C. § 1362(6).

20. Storm water, snow melt, surface drainage and runoff water has been leaving the Respondent's facility and flowing into the City of West Fargo's storm sewer system.
21. The City of West Fargo's storm sewer system flows in to the Sheyenne River.
22. The Sheyenne River is a "navigable water" and "waters of the United States," as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2, respectively.
23. The storm water runoff from Respondent's facility is the "discharge of a pollutant" as defined by section 502(12) of the Act, 33 U.S.C. § 1362(12) and 40 C.F.R. § 122.2.
24. Respondent's construction activity at its facility is a "point source" as that term is defined in section 502(14) of the Act, 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2.
25. Construction activities disturbing over five acres began at the Respondent's facility in August of 1993.
26. On October 22, 2002, authorized EPA employees entered the Respondent's facility and, with the consent of Respondent, inspected the facility for compliance with the Act and EPA's regulations.
27. The inspection revealed that the Respondent was not authorized by any NPDES permit to discharge storm water.
28. As of October 22, 2002, the Respondent had neither applied for nor received an individual NPDES permit authorizing storm water discharges from its facility.
29. As of October 22, 2002, the Respondent had not submitted a notice of intent to have the storm water discharges at its facility covered by North Dakota Permit no. NDR03-0000.
30. As of October 22, 2002, the Respondent had not developed a storm water pollution prevention (SWPP) plan for its facility.
31. As of October 22, 2002, the Respondent did not have any program in place for inspecting any Best Management Practices (BMPs) for reducing stormwater pollution from its facility.
32. As of October 22, 2002, the Respondent did not maintain vehicle track out pads at its facility.
33. As of October 22, 2002, storm water discharges from the Respondent's facility were flowing into detention ponds.

- 34. As of October 22, 2002, the detention ponds at the Respondent's facility were connected to the City of West Fargo's municipal separate storm sewer system.
- 35. As of October 22, 2002, the Respondent was allowing significant trash to accumulate near storm drains at its facility.
- 36. As of October 22, 2002, the Respondent was not implementing any Best Management Practices to minimize environmental impacts from storm water discharges.

COUNT 1

- 37. All previous Findings of Fact and Law are realleged for purposes of this count.
- 38. At the time of the inspection, Respondent had not obtained any NPDES permit authorizing storm water discharges from its facility.
- 39. The Respondent's failure to obtain an NPDES permit on or before August 1993 is a violation of sections 301(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a) and 1342(p), and 40 C.F.R. § 122.26.
- 40. Each day the Respondent allowed unpermitted discharges of storm water from its facility constitutes a separate violation of the Act and EPA's regulations.

COUNT 2

- 41. All previous Findings of Fact and Law and allegations of Count I are realleged for purposes of this count.
- 42. The Respondent's failure to submit a notice of intent to be covered under any general permit or to apply for any individual permit authorizing storm water discharges on or before ninety days before it began construction at its facility is a violation of the Act and 40 C.F.R. §§ 122.21(c) and 122.26(c).
- 43. Each day since the Respondent initiated construction activities at its facility without having submitted a notice of intent to be covered under a general permit or applying for an individual permit authorizing storm water discharges constitutes a separate violation of the Act and EPA's regulations.

ORDER

Respondent is ordered to perform the following actions.

- 44. Within 10 days of receipt of this administrative order (Order), the Respondent is to

submit written notice of intent to EPA to comply with the requirements of this Order.

45. Respondent is ordered to comply fully with all requirements of North Dakota Permit no. NDR03-0000, including but not limited to all requirements relating to developing and implementing a SWPP plan, implementing all BMPs required by the permit or the SWPP plan, inspecting its construction site, and submitting a Notice of Termination. In addition, the Respondent shall
- i. submit copies of the all Site Inspection Records (SIRs) quarterly to EPA and the North Dakota Department of Health, with each report to be due 10 days after the end of each calender quarter (July 10, 2004, October 10, 2004, January 10, 2005, April 10, 2005, etc.) for the life of the construction project or until written notice is given by EPA that the submissions can cease, with each quarterly report to include all SIRs for that quarter;
 - ii. no later than 30 days after receiving this Order, submit to EPA and the North Dakota Department of Health a time line of all phases of development at the facility, including the start and end date of each phase of construction, and the acreage disturbed during each phase;
 - iii. no later than thirty days after receiving this Order, submit to EPA the SWPP plan and a copy of the Notice of Intent and renewed permit or a copy of an individual storm water permit to demonstrate compliance; and
 - iv. within forty-five days of receipt of this Order, submit written documentation, including photographs, that best management practices have been developed and implemented as required by the permit and detailed in the SWPP plan, including, but not limited to, erosion control and good housekeeping practices.

OTHER PROVISIONS

46. EPA regulations protect confidential business information. See 40 C.F.R. part 2, subpart B. If Respondent asserts a business confidentiality claim for information required to be submitted under this order, Respondent shall provide such information only to EPA, and EPA will determine if the information the Respondent has designated meets the criteria in 40 C.F.R. § 2.208 for being treated as confidential. Unless Respondent asserts a confidentiality claim at the time the information is submitted, the information shall be provided to both EPA and the North Dakota Department of Health as specified in this Order, and EPA may make the information available to the public without further notice to the Respondent.

47. All written notices and reports required by this Order shall be sent to the following addresses:

Colleen Gillespie (8ENF-T)
U.S. EPA Region 8
Office of Enforcement, Compliance
and Environmental Justice
Technical Enforcement Program
999 18th Street, Suite 300
Denver, Colorado 80202-2466

Abbie Krebsbach
North Dakota Department of Health
P.O. Box 5520
Bismarck, ND 58606-5520

48. Any failure to comply with the requirements of this Order shall constitute a violation of this Order and may subject the Respondent to penalties as provided under the Act. 33 U.S.C. § 1319.
49. This Order does not constitute a waiver or modification of the terms and conditions of North Dakota Permit no. NDR03-0000, which remains in full force and effect, or of any other legal responsibility or liability of the Respondent.
50. This Order does not constitute a waiver of or election by EPA to forego any civil or criminal action to seek penalties, fines or other relief under the Act. The Act authorizes EPA to seek civil penalties of up to \$32,500 per day for each violation of the Act, and fines and imprisonment for willful or negligent violations. 33 U.S.C. § 1319; 40 CFR part 19.

Date: 4/16/04 By: Eddie A. Sierra for/
Carol Rushin
Assistant Regional Administrator

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON APRIL 16, 2004.**